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pediped Infant Footwear LLC

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

PEDIPED INFANT FOOTWEAR LLC,

Plaintiff,

v.

KUDOS LEATHERGOODS LTD d/b/a  
JACK AND LILY and ROBERT THOMAS  
BUELL, Individually,

Defendants.

CASE NO. 08-CIV-3572 (LTS)

**PLAINTIFF'S NOTICE OF MOTION AND MOTION FOR CIVIL CONTEMPT,  
EQUITABLE AND MONETARY SANCTIONS, AND EXPEDITED DISCOVERY**

PLEASE TAKE NOTICE that, pursuant to Local Civil Rules 6.1(b) and 83.9, plaintiff pediped Infant Footwear LLC ("pediped") hereby brings its Motion for Civil Contempt, Equitable and Monetary Sanctions, and Expedited Discovery against Defendants.

As more fully demonstrated in pediped's supporting papers, Defendants Kudos Leathergoods Ltd d/b/a Jack and Lily ("Kudos") and Robert Thomas Buell ("Buell"), President of

Kudos, have violated the Court's June 19, 2008 Injunction (Dkt. No. 21) by again selling the children's footwear and packaging that are subject to the Court's Injunction.

Accordingly, pursuant to this Court's Local Civil Rule 83.9, pediped now seeks the following relief:

1. A citation for civil contempt against Defendants.
2. Amendments to the Preliminary Injunction that
  - (a) require Defendants to recall the subject shoes and packaging from the marketplace by sending to each customer whom they have supplied with such products and packaging, excluding end consumers, a copy of the Preliminary Injunction and order of recall;
  - (b) expressly confirm Defendants' existing legal obligation against destroying, tampering with, or otherwise disposing of the shoes, packaging, and all other evidence and relevant information and things, during the pendency of this action;
  - (c) require Defendants, to avoid the risk that the subject products and packaging will continue to be shipped, to store them at a separate facility and to verify such storage by an independent third party;
  - (d) require Defendants to disseminate corrective advertising, at Defendants' cost and upon Plaintiff's approval, that informs consumers, the trade and the public at large of Defendants' unlawful conduct and of the injunction, and/or require Defendants to pay Plaintiff's costs for such corrective advertising;
  - (e) require Defendants to file with the Court and serve on pediped's counsel within thirty (30) days of the Amended Preliminary Injunction a written report, under oath, setting forth in detail the manner in which Defendants have complied with the Amended Preliminary Injunction; and
  - (f) require Defendants to file with the Court and serve on pediped's counsel within thirty (30) days of the Amended Preliminary Injunction a detailed written statement, prepared by an

independent certified public accountant, of (i) the total quantities of shoes represented by the SKU numbers in Exhibit 1 hereto that were sold, distributed, transported, delivered, or otherwise marketed by or to Defendants and (ii) all revenues, gross profits and net profits derived by Defendants from U.S. sales of such shoes until the date of the Amended Preliminary Injunction.

3. Expedited discovery with respect to Defendant Buell concerning

- (a) the exact nature and scope of Defendants' violation(s) of the Court's Injunction and
- (b) pediped's underlying claims of infringement, unfair competition and dilution.

4. Monetary sanctions in the form of

- (a) disgorgement of Defendants' revenue from their sales in violation of the Injunction;
- (b) an additional coercive sanction in the amount of \$1,000 a day for non-compliance;
- (c) an award of pediped's costs; and
- (d) an award of pediped's attorneys' fees in connection with this motion and discovery conducted in conjunction with the motion.

Pediped's present Motion is supported by the accompanying Memorandum and Declarations of Nancy M. Girouard, Deborah A. Wilcox, and Theresa A. Blaber.

Pediped hereby certifies through the undersigned that, pursuant to section 2(b) of the Individual Practices of Judge Laura Taylor Swain, pediped has used its best efforts to resolve informally the matters raised in this submission, including an exchange of written communications outlining the parties' legal and factual positions and one or more telephonic discussions of the matters with opposing counsel.

Respectfully submitted,

BAKER & HOSTETLER LLP

Dated: New York, New York  
August 1, 2008

By: /s/ Thomas A. Canova  
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# **EXHIBIT #1**

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FEATURING OUR EXCLUSIVE RUBBER SOLE PADS. AVAILABLE APRIL 20TH, 2008



Daisy patch / pink (171)



Daisy patch / mint (172)



Saddle shoe / pink & chocolate (181)



Saddle shoe / black & white (182)



Heart / pink (162)



Heart / chocolate (161)



Sandal / white (412)



Sandal / pink (411)



Princess / mint (131)



Sport / pink (303)





Love hearts / pink (261)



Hibiscus / navy (142)



Love / chocolate (111)



Lovebirds / chocolate (151)



Solid / navy (251)



Solid / chocolate (252)



Anchor / white & light blue (221)



Anchor / navy & light blue (222)



Prince / chocolate (243)



Prince / light blue (241)



Sport / navy & white (301)



Sport / white & green (302)



Sandal / chocolate (402)



Sandal / navy (401)



Skull / black (201)

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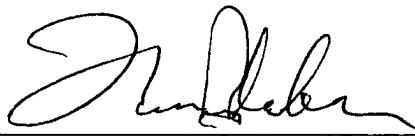
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**CERTIFICATE OF SERVICE**

I hereby certify that on this 1st of August, 2008, a copy of the foregoing **Plaintiff's Notice of Motion and Motion for Civil Contempt, Equitable and Monetary Sanctions, and Expedited discovery, Memorandum in Support of Plaintiff's Motion for Civil Contempt, Equitable and Monetary Sanctions, and Expedited Discovery, Declaration of Deborah A. Wilcox, Declaration of Theresa A. Blaber, Declaration of Nancy Girouard and Proposed Order Citing Defendants for Civil Contempt and Granting Equitable and Monetary Sanctions and Expedited Discovery** were filed electronically. Notice of this filing was sent to all parties who have appeared by operation of the Court's Electronic Filing System.

  
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Theresa Blaber  
Paralegal